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Supreme Court, U.S.
FILED

No. 08-426 SEP 26 2008

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William K. Suter, Clerk

In The

Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

HOUSTON COUNTY,
GOVERNOR'S ESTATE, et. al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

How much money must change hands in financial dealings to constitute a conflict of interest or impartiality of a Judge or Special Master to warrant recusal under the Fourteenth Amendment when the Special Master sold property to the Developer for a profit prior to Petitioner's Quiet Title Action?

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Appellant and Petitioner: Bonnie Harbuck

Appellee and Respondents:

Governor's Estate, Walter Griff Clements,
Houston County,

Michael Meiner, City of Warner Robins

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PETITION FOR A WRIT OF CERTIORARI

Bonnie Harbuck respectfully petitions for a writ of certiorari to review the opinion and judgment of the Supreme Court of Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia dated May 19, 2008 is officially reported as *Harbuck v. Houston County*, 284 Ga. 4 (2008), and is reproduced at App. A.

JURISDICTION

The judgment of the Supreme Court of Georgia sought to be reviewed was entered on May 19, 2008, and reconsideration was denied on June 30, 2008. This petition is timely under 28 U.S.C. Section 2101(c) and the Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of the opinion and judgment sought to be reviewed. This Court has jurisdiction to review the judgment of the Supreme Court of Georgia pursuant to Article III of the U.S. Constitution. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions involved are the Fourteenth Amendment to the Constitution, Article 6, Clause 2 of the Constitution, the Code of Judicial Conduct of the Rules of the Judicial Qualifications Commission, and the Federal Code of Conduct for United States Judges.

STATEMENT OF THE CASE

This action arises from a Georgia Petition to Quiet Title Action. Harbuck owned property in a subdivision that a Developer, Governor's Estate, sought to take to make a road for a thoroughfare for at least 100 cars per day by Harbuck's home, over property that she had a deed. Developer refused to develop access to his property from a major artery of the County instead of through a residential neighborhood.

Harbuck filed a Quiet Title Action regarding her upkeep of the property for over seven years. The property was originally to be a road per the plat, but was never paved or maintained by the former Developer, Griff Clements, or Houston County. Harbuck also had a deed to the entire subdivision recorded after all parts of the subdivision had been conveyed, leaving only the section in front of Harbuck's home that was intended as an unpaved turnaround that Clements would pave at a later date, per the unrecorded plat.

Developer sought to commandeer Harbuck's property and sought an emergency order from the trial court when Harbuck placed vehicles on the disputed property to stop the Developer from cutting down the trees on the property. (App. 11) Thereafter the Trial Court appointed a Special Master to hear the case, pursuant to Georgia Statute. The trial Court appointed Arthur H. Clarke, Jr.

Harbuck filed a motion to recuse Clarke as Special Master which was denied. (App. 8) Three people: Clarke, Carreker, and McConnell, a retired senior Judge from the Circuit, sold property to the Developer, Governor's Estate for approximately $200,000 in 2005. The trial Court found no evidence warranting recusal of the Special Master. (App. 8) The Quiet Title Petition was filed in 2006.

The Georgia Supreme Court found the financial transaction between the Special Master and Developer unrelated to the case, sufficient to rise to the level of recusal. (App. 1)

Harbuck petitions for review of the Supreme Court decision that violated the Fourteenth Amendment to be afforded a fair trial and due process rights and Article 6 Clause 2 of the Constitution, when the Lower Court found no financial impropriety between the Special Master and the Developer sufficient to rise to the level of recusal and appointment of a new Special Master with no financial dealings with any parties in the case.

REASONS FOR GRANTING THE PETITION

This case is subject to being repeated again. The Federal Code of Conduct for United States Judges mirrors the Code of Judicial Conduct of the Rules of Judicial Qualifications Commission for Georgia as well as the ABA Model Code of Judicial Conduct. Failure to ensure an impartial judiciary results in the gross constitutional violations for due process and a fair trial.

Codes of Judicial Conduct exist at the Federal and State Levels. Yet these codes and rules are useless if prior contacts and prior financial dealings are not part of the threshold for determining financial impropriety.

The right to receive a fair and unbiased trial is guaranteed in the Constitution. Canon 2 of the Georgia Judicial Conduct of the Rules of the Judicial Qualifications Commission states that, "judges shall avoid impropriety and the appearance of impropriety in all their activities." Code of Judicial Conduct of the Rules of the Judicial Qualifications Commission.

The Georgia rule mirrors the Federal Code of Conduct for United States Judges. Canon 2 of the Code of Conduct for United States Judges states a judge should avoid impropriety and the appearance of impropriety in all activities.

"The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a

reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." Commentary Cannon 2A, Code of Conduct for United States Judges.

The Special Master, a second person, and the retired Senior Judge of the Circuit sold property to the Developer for a profit. How much money must change hands in financial dealings to constitute a conflict of interest or impartiality? Is there a bright-line rule that because the sale was $199,400 and not $200,000 that no appearance of financial impropriety was triggered?

Judges are called to a higher standard. It is often times burdensome and problematic. Yet, the failure to recuse Judges and those who stand in Judges' places as Special Masters when they have financially gained from a party in a case erodes the very spirit and letter of the Constitution. Every person is entitled to due process and a fair trial.

It is bad enough in this case that the County allowed a Developer to create a road that the County purportedly owned by virtue of a plat but that the County never maintained for private economic development. It is bad enough that Harbuck requested a jury trial allowed under the statute and one was denied by the trial court through summary judgment.

It is bad enough that the Special Master attempted to invalidate Harbuck's deed, when Harbuck never sought to have her deed invalidated. It is bad

enough that the Georgia Supreme Court decision did not coincide with subsequent cases after the briefing schedule. Yet these are state court rulings of which exists no jurisdiction to disturb the rulings and interpretations of facts.

But to deny that the sale of property by the Special Master to the Developer does not rise to the level sufficient to show bias or the appearance of bias, solidifies why the opinion of our judicial system is perceived in this country as broken.

Financial impropriety or the amount of money that must change hands to trigger financial impropriety is reviewable at this Court because such denials trigger the Fourteenth Amendment and the right to due process and a fair trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BONNIE MICHELLE SMITH
Counsel of Record

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Georgia Supreme Court Reports

HARBUCK v. HOUSTON COUNTY

284 Ga. 4 (2008)

HARBUCK v. HOUSTON COUNTY et al.

No. S08A0025.

Supreme Court of Georgia.

Decided May 19, 2008.

Reconsideration Denied June 30, 2008.

BENHAM, Justice.

In 1999, Bonnie Harbuck purchased and built a home on Lot 4, Block "A" of a subdivision called Ashley Oaks in Houston County. Great Oak Way is a road that runs alongside the front of Harbuck's property. In 2006, appellee Governor's Estate, LLC ("Governor's Estate") began developing land adjacent to Harbuck's property. As part of the development, Governor's Estate sought to complete the unpaved portion of Great Oak Way to provide access to its development. Harbuck filed a petition to establish title to the unpaved portion of Great Oak Way. A special master ruled that appellees Houston County and Governor's Estate were entitled to notice of the action and they became parties. In his recommendation to the trial court, the special master found that Harbuck could not sue a subdivision of the state for adverse possession and that Harbuck did not have color of title. The special master also found that, to avoid dismissal, Harbuck would have to show that the right of way was never dedicated, that Houston

County failed to accept the dedication, or that Houston County abandoned the right of way. The special master left these issues to the trial court for disposition. After the special master's report was issued, appellees moved for summary judgment. The trial court granted the motion for summary judgment, finding there were no issues of fact concerning color of title, dedication and acceptance, or abandonment.

On appeal, Harbuck contends that it was erroneous for the trial court, as opposed to the special master, to rule on the motions for summary judgment, that appellees lacked standing, and that the trial court erred in failing to recuse the special master. Finding no error, we affirm.

1. Harbuck's assertion that only the special master had jurisdiction to consider and rule upon appellees' motions for summary judgment is without merit. In quiet title actions, a special master exercises jurisdiction to "ascertain . . . the validity . . . of petitioner's title" (OCGA § **23-3-66**), but there is no authority divesting the trial court's overall jurisdiction of the case. *Eardley v. McGreevy*, **279 Ga. 562, 564-565** (2) (**615SE2d744**) (2005) ("in submitting a quiet title case to a special master, the trial court does not cede jurisdiction to render a final decision"); *Heath v. Stinson*, **238 Ga. 364** (**233 SE2d 178**) (1977) (special master could not grant summary judgment because OCGA § **23-3-67** gives only the trial court authority to issue the final decree). Therefore, it was not reversible error for the trial court to consider and

rule upon appellees' motions for summary judgment which finally terminated the action.

2. Similarly, Harbuck's contention that appellees lack standing is unsubstantiated. The special master, pursuant to OCGA § **23-3-65**(a)(1), determined that appellees Houston County and Governor's Estate, among others, were entitled to notice of appellant's quiet title action. Houston County and Governor's Estate filed pleadings in the action in accordance with OCGA § **23-3-65**(c) and established their interests in the proceeding. Houston County had a direct interest in the proceeding because the subdivision owner expressly dedicated all streets delineated in the recorded subdivision plat, including Great Oak Way, to public use.[1] Governor's Estate also had a stake in the outcome of the case because of its interest in paving the remainder of Great Oak Way to provide access to its new development. This interest in the quiet title action was sufficient to invoke the standing of appellees as possible adverse claimants of which Harbuck had actual or constructive notice. See *Resseau v. Bland*, **268 Ga. 634**(1) (**491 SE2d 809**) (1997).

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[1] In support of her standing argument, Harbuck relies on a typographical error in Houston County's answer to her complaint to allege that Houston County made an admission that it did not accept the dedication of the right of way. The trial court ultimately was not persuaded by this argument as it found no issue of fact in regard to acceptance. Even if such admission were found to be valid, it would not divest Houston County of standing in the proceeding, but would go to the merits.

3. On the merits, Harbuck argues that the right of way was never dedicated to Houston County. In support of this contention, she cites language from a copy of a plat she received at her 1999 closing, but which was never recorded by the developer.[2] The language states: "where dead ends occur during development temporary turn-arounds to be installed, if no future development within 14 months turn-arounds to be paved at the Developer's expense with all necessary utilities and easements to be dedicated to Houston County." Harbuck argues the right of way was never dedicated because it was left unpaved. A plain reading of this passage from Harbuck's unrecorded plat document, however, neither retracts nor obviates the presumption of express dedication created by the recorded subdivision plat survey which dedicated "to public use all areas shown or indicated on [the] plat as streets, alleys, easements, or parks." *See Hobbs v. Ware County*, **247 Ga. 385**(2) (**276 SE2d 575**) (1981) (the recording of a plat dedicating roads to the public creates a presumption of express dedication); *Ketchum v. Whitfield County*, **270 Ga. 180** (**508 SE2d 639**) (1998) (county held title to land by express dedication). Therefore, the trial court correctly determined there was no issue of fact in regard to dedication.

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[2] The document contained an incorrect plat reference and was labeled "NOT FOR RECORDING."

Likewise, we conclude the trial court correctly determined there was no issue of fact regarding the county's acceptance of the dedication.

> [I]t is not necessary that the public authorities should work the entire street within the confines of the grant, to make effectual the act of acceptance.
>
> Any improvements or repairs done on the street by the public authorities in recognition of the dedication of a defined strip of land for a street may be regarded as acceptance of the dedication.

Hobbs v. Ware County, **247 Ga. at 386**; *Ketchum v. Whitfield County*, **270 Ga. at 182**. Here, the unpaved section of the right of way to which Harbuck claims color of title is in fact the continuation of Great Oak Way, a street that was expressly dedicated and has been accepted by the county's acts of partially paving and maintaining the street. Id.

Because we affirm the trial court's ruling that there was no issue of fact regarding dedication or acceptance, it is impossible for Harbuck to prove abandonment for twenty years as provided in OCGA § **44-9-6** because the subdivision plat containing the express dedication was recorded in 1996. Since there was no abandonment by Houston County, the trial court was also correct in finding no issue of fact existed concerning color of title as it was irrelevant.

4. Finally, Harbuck contends that the trial court erred when it denied her motion to recuse the

special master. Harbuck based her motion for recusal on the fact that in 2005, the special master, along with two other individuals, deeded land unrelated to this action to appellee Governor's Estate. This single, unrelated transaction does not rise to a level sufficient to show bias worthy of granting a motion to recuse. *Wellons v. State*, **266 Ga. 77, 88** (18) (**463 SE2d 868**) (1995) (to prevail on a motion to recuse, a party must show that the judge harbored a bias stemming from an extrajudicial source that was "of such a nature of intensity that it would impede the exercise of impartial judgment"); *Ware v. Henry County Water & Sewerage Auth.*, **258 Ga. App.778, 782**(2) (**575 SE2d 654**) (2002) ("The alleged bias of the judge which would warrant a recusal must be of such a nature and intensity to prevent the defendant from obtaining a trial uninfluenced by the court's prejudgment. . . . [Cit.]"). Since there was no conflict of interest warranting recusal, the trial court did not err and we affirm the trial court's grant of summary judgment to appellees.

Judgment affirmed. All the Justices concur.

DECIDED MAY 19, 2008 –
RECONSIDERATION DENIED JUNE 30, 2008.

Title to land. Houston Superior Court. Before Judge Lumsden.

Bonnie M. Smith, for appellant.

G. E. Bo Adams, Arthur H. Clarke, Jr., O'Neil, Long & Hall, Michael J. Long, Wade & Elliott, James E. Elliott, Jr., for appellees.

IN THE SUPERIOR COURT
OF HOUSTON COUNTY
STATE OF GEORGIA

IN RE: BONNIE HARBUCK,	)	
Plaintiff,	)	
v.	)	
ALL PERSONS KNOWN AND UNKNOWN WHO CLAIM ADVERSELY TO PLAINTIFF'S TITLE TO LAND,	)	**Civil Action Number: 2006-V-84734-K**
Defendants.	)	

ORDER

(Filed Aug. 1, 2007)

On May 12, 2006, Plaintiff in the above-styled civil action filed a Petition to Establish Title. Special Master, Arthur Clarke, Jr., determined that the parties entitled to service of this action included Houston County, the City of Warner Robins, Michael W. Meiner, Governor's Estate, LLC, and Clements Title Service, Inc. After an interim report was filed by the special master, Defendants Houston County and Governor's Estate, LLC moved this Court for summary judgment. On July 31, 2007 parties to this action participated in a hearing on the merits of Defendants' Motions for Summary.

After reviewing the parties' briefs and hearing argument on the Motions for Summary Judgment, this Court determines that there is no genuine issue of material fact regarding color of title. In the same, this Court determines that there are no material issues of triable fact with regard to dedication of the property, acceptance of the property or abandonment of the property in question.

Therefore, Defendants' Motions for Summary Judgment are **GRANTED**.

It is **SO ORDERED** this the 1st day of August, 2007.

/s/ Katherine K. Lumsden
Hon. Katherine K. Lumsden
Judge of the Superior Court
Houston Judicial Circuit

IN THE SUPERIOR COURT
OF HOUSTON COUNTY
STATE OF GEORGIA

In Re: Bonnie Harbuck,	:	**CIVIL ACTION**
BONNIE HARBUCK	:	**84734**
Plaintiff	:	
	:	
VS	:	
ALL PERSONS KNOWN	:	
AND, UNKNOW WHO	:	
CLAIM ADVERSELY	:	
PLAINTIFF'S TITLE TO	:	
LAND	:	

ORDER

Plaintiff requested the Special Master appointed by the Court be replaced based on an allegation of conflict of interest. The Court having heard from the parties, finds there is no conflict of interest or appearance of impropriety that would warrant such action.

IT IS ORDERED that the Plaintiff's request be denied and that the Special Master continue to oversee matters in this case

SO ORDERED this 12th day of April, 2007

/s/ Katherine K. Lumsden
Judge Katherine K. Lumsden

IN THE SUPERIOR COURT
OF HOUSTON COUNTY
STATE OF GEORGIA

IN RE: BONNIE HARBUCK	
BONNIE HARBUCK, Plaintiff	
V.	CIVIL ACTION #2006-V-84734-N
ALL PERSONS KNOWN AND UNKNOWN WHO CLAIM ADVERSELY TO PLAINTIFF'S TITLE TO LAND	

ORDER

(Filed Dec. 6, 2006)

There being a case pending concerning the ownership and title of certain property adjacent to Plaintiff's residential lot, and the Court having designated a Special Master to hear the controversy and decide the issue, and the Court further having advised all of the interested parties that the disputed property may be used for purposes of ingress and egress to the property adjacent to the Plaintiff's lot, and Plaintiff having undertaken to block ingress and egress by parking vehicles on the disputed property.

Now therefore, the Court does hereby order that the vehicles be removed from the disputed property and that ingress and egress across the property be permitted and not interfered with in any way whatsover. The Houston County Sheriff's Department

is hereby authorized to assist in the enforcement in this order and to remove any vehicles that are parked upon the property and blocking ingress or egress.

SO ORDERED, the 6th of December, 2006.

/s/ George F. Nunn, Jr.
George F. Nunn, Jr.
Judge, Houston Superior Court

Cc: Houston County Sheriff's Department
Michelle Smith, Attorney
Bo Adams, Attorney

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No. 08-426

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BONNIE HARBUCK,

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v.

HOUSTON COUNTY,
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Respondents.

On Petition For Writ Of Certiorari To The Georgia Supreme Court

BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED BY PETITIONER

How much money must change hands in financial dealings to constitute a conflict of interest or impartiality of a Judge or Special Master to warrant recusal under the Fourteenth Amendment when the Special Master sold property to the Developer for a profit prior to Petitioner's Quiet Title Action?

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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Michael Meiner, City of Warner Robins

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BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

COMES NOW, all Respondents herein, and files this Brief in Opposition to Petitioner's Petition for Writ of Certiorari, and shows to the Court the following:

I. STATEMENT OF FACTS

On March 22, 1999, Petitioner Bonnie Harbuck (hereinafter "Harbuck") purchased certain real property on Great Oak Way known as Lot 4, Block A, of Ashley Oaks Subdivision, in Houston County, Georgia, and constructed thereon her residence. The deed conveying said property to her is recorded in Deed Book 1443, Page 570, Clerk's Office, Houston Superior Court. (*"Defendant's Exhibit 1" attached to Brief in Support of Motion for Summary Judgment,* R. 154.) (App. 1) The plat identifying the property purchased by Harbuck and cited in said deed is recorded in Plat Book 49, Page 124, Clerk's Office of Houston Superior Court. (*"Defendant's Exhibit 2" attached to Brief in Support of Motion for Summary Judgment,* R. 155.) (App. 4)

Governor's Estate, LLC (hereinafter "Governor's Estate") is a Georgia Limited Liability Company engaged in real estate development. On December 7, 2005, Governor's Estate purchased the real property adjacent to Ashley Oaks Subdivision (and Harbuck's lot) (App. 5) for the purpose of developing a residential

subdivision. Access to this subdivision to be developed by Governor's Estate is through Great Oak Way of Ashley Oaks Subdivision. (R. 40-41.) (App. 8)

Harbuck brought an action captioned "Petition to Establish Title," claiming adverse possession of certain property identified therein as "*property not paved between Lots 4 A and 11 A on Great Oak Way in Ashley Oaks Subdivision.*" In her Petition, Harbuck claims that she has acquired title to this property by maintaining same through "*the cutting* of *grass, undergrowth, etc.*" for a period of seven (7) years. (*Petition to Establish Title,* R. 4-6.)

Thereafter, on November 14, 2006, Harbuck amended her Petition, in which *she attached* a *new* deed dated the same day of the original deed, *i.e.* March 22, 1999, that she just recorded on November 14, 2006 (the same day she filed the amendment). (App. 9) Said deed purports to convey the same property already conveyed to Harbuck pursuant to the original deed recorded at the time of the purchase of her lot, *i.e.,* Lot 4, Block A, Ashley Oaks Subdivision. (*See* R. 154.) However, the newly recorded deed contained an erroneous plat reference, that being Plat Book 48, Page 76. (*Warranty Deed,* R. 17.) That plat is actually the survey of the entire 10.70-acre tract which was purchased by the developer of Ashley Oaks Subdivision prior to his developing it into a subdivision. (*Defendant's Exhibit 4 and 5, attached to Brief in Support* of *Motion for Summary Judgment,* R. 157 and 158.) (App. 12)

Attorney Arthur H. Clarke, Jr. was appointed Special Master by the Houston Superior Court, and determined that the parties entitled to service of this action included Houston County, the City of Warner Robins, Michael W. Meiner (the owner of the property across the street from Harbuck), Governor's Estate, and Clements Title Service, Inc. (the developer of Ashley Oaks Subdivision and seller to Harbuck). (R. 31-33.)

After conducting a hearing, the Special Master filed an "Interim Report" with the Superior Court. (R. 114-132.) In said Report, the Special Master found that Harbuck's action could not be maintained under her claim of adverse possession, and thus recommended that "Petitioner's claim be dismissed unless she proves that the aforesaid right-of-way was either **abandoned** by the State," or either (a) was not **dedicated** as a public right-of-way; or (b) was not **accepted** by the County. (R. 118 [*Emphasis added*]).

Thereafter, Governor's Estate filed its Motion for Summary Judgment, contending that there was no genuine issue of material fact as to the matter of the dedication of Great Oak Way and its acceptance by the County, and that as a matter of law there can be no abandonment of the right-of-way as claimed by Harbuck. (R. 140, 141, 143-148.) The Board of Commissioners of Houston County also filed a Motion for Summary Judgment along those same grounds. (R. 134, 136-139.)

After an oral hearing on said motions, the Superior Court of Houston County granted summary judgment against Harbuck, finding that there was no genuine issue of material fact regarding color of title, dedication, acceptance, and abandonment as to the property in question. (R. 184-185.) Harbuck then filed her Notice of Appeal to the Supreme Court of Georgia. (R. 1)

II. ARGUMENT AND CITATION OF AUTHORITY TO DENY THE PETITION

A. PETITIONER HEREIN FAILED TO PROPERLY BRING THE ISSUE OF RECUSAL BEFORE THE TRIAL COURT.

There are sufficient safeguards in place in Georgia to ensure an impartial judiciary. Georgia Uniform Superior Court Rule 25.1 requires that a Motion to Recuse be in writing, be accompanied by an affidavit setting forth the facts upon which the Motion is founded and be filed no later than 10 days prior to the hearing or trial which is the subject of the recusal. (App. 13) Harbuck never filed a written motion to recuse. She never filed an affidavit setting forth the facts upon which such motion is founded, and she certainly did not file it timely, having made an oral motion at the start of the hearing in front of the Special Master.

Harbuck's attorney, for the first time, asked that the Special Master recuse himself due to an alleged

appearance of impropriety at the hearing before the Special Master on April 12, 2007. Said Motion was made orally in her opening statement. The trial court denied the motion. (See Petitioner's App. 10)

Petitioner having totally failed to comply with the requirements regarding her motion to recuse, the Trial Court's denial should not be reversed. *Brice v. State*, 242 Ga. App. 163, 529 S.E.2d 178 (2000); *Harris v. State*, 202 Ga. App. 618, 414 S.E.2d 919 (1992). "*An untimely motion to recuse or a motion to recuse that is defective waives the grounds for recusal.*" *Bitt Int'l Co. v. Fletcher*, 259 Ga. App. 406, 409, 577 S.E.2d 276 (2003). Harbuck's attorney simply failed to comply with the procedural safeguards established by the Superior Court rules.

B. PETITIONER'S RECUSAL ARGUMENT FAILS ON ITS MERITS.

Petitioner's contention that the Special Master should have been recused was even addressed on its merits. Petitioner based her motion for recusal on the fact that in 2005, the Special Master, along with two other individuals, deeded land *unrelated* to this action to Respondent Governor's Estate. As the Georgia Supreme Court stated in its opinion, "this single, unrelated transaction does not rise to a level sufficient to show bias worthy of granting a motion to recuse." *Wellons v. State*, 266 Ga. 77, 88 (463 S.E.2d 868) (1995) (to prevail on a motion to recuse, a party must show that the judge harbored a bias stemming

from an extrajudicial source that was "of such a nature and intensity that it would impede the exercise of impartial judgment"); *Ware v. Henry County Water & Sewerage Authority*, 258 Ga. App. 778, 782 (575 S.E.2d 654) (2002) ("The alleged bias of the judge which would warrant a recusal must be of such a nature and intensity to prevent the defendant from obtaining a trial uninfluenced by the court's prejudgment. . . . ")

III. CONCLUSION

Petitioner's question to this Court is both sarcastic and insulting. How much money changes hands has absolutely nothing to do with the issue. Furthermore, the question is moot by virtue of Petitioner's failure to follow the Superior Court Rules and also fails on its merits as this property is wholly unrelated to the real property in issue. Therefore, this petition should be denied.

Respectfully submitted, this 31st day of October 2008.

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BOOK 1443 PAGE 570

Record & return to: H. DAVID MOORE, Post Office Drawer 8269, Warner Robins, Georgia 31095 (912-328-3200)

STATE OF GEORGIA
COUNTY OF HOUSTON

WARRANTY DEED

(Filed Apr. 8, 1999)

THIS INDENTURE, made and entered into this the 22nd day of March, 1999, between CLEMENTS TITLE SERVICES, INC., a corporation organized and existing under the laws of the State of Georgia, party of the first part, hereinafter referred to as "Grantor", and BONNIE HARBUCK, of the State of Georgia and County of Houston, party of the second part, hereinafter referred to as "Grantee."

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency whereof being hereby expressly acknowledged, has granted, bargained, sold, alienated, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm, unto the said Grantee all of the following described property, to-wit:

All that tract or parcel of land situate, lying and being in Land Lot 162 of the Tenth Land District of Houston County, Georgia, known and designated as Lot 4, Block "A", of a Subdivision known as ASHLEY OAKS, according to a map or plat of survey of said Subdivision prepared by Clements Surveying Co., Inc., certified by Walter G. Clements, Georgia Registered Land Surveyor No. 1967, dated August 22, 1996, a copy of which is of record in Map Book 49, Page 124, Clerk's Office, Houston Superior Court. Said plat and the recorded copy thereof are by this reference thereto incorporated herein and made a part hereof.

The above-described property is conveyed subject to the restrictive covenants set forth in instrument dated September 6, 1996, recorded in Deed Book 1237, Page 494 *et seq.*, Deed Records of Houston County, Georgia; also, subject to easements, building lines and other matters shown on the subdivision survey.

TO HAVE AND TO HOLD the said tract or parcel of land, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever IN FEE SIMPLE.

AND THE SAID GRANTOR warrants and will forever defend the right and title to the above-described property unto the said Grantee, its successors and

assigns, against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed on the day and year first above written.

CLEMENTS TITLE SERVICE, INC.

By: /s/ Walter G. Clements
WALTER G. CLEMENTS,
President

Signed, sealed and
delivered in the presence of:

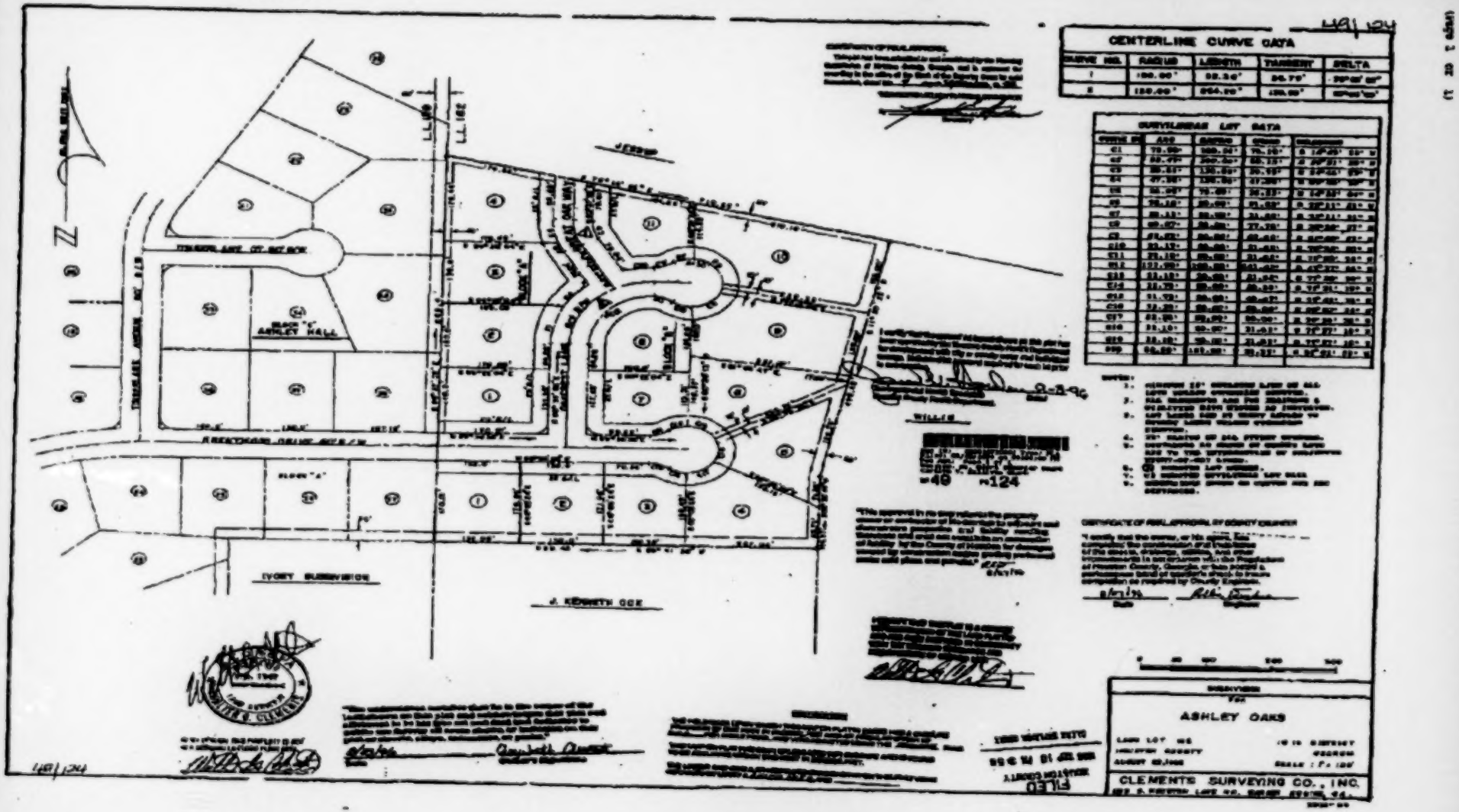
/s/ Mandy D. Noles
Unofficial Witness

/s/ Melissa C. Kirksey
Notary Public

[SEAL]

MELISSA C. KIRKSEY
Notary Public
STATE OF GEORGIA
My Comm. Exp. 11/30/01

App. 4


CENTERLINE CURVE DATA
CURVE NO. | RADIUS | LENGTH | TANGENT | DELTA
SURVEYOR'S LOT DATA
ASHLEY HALL
IVORY SUBDIVISION
J. KENNETH COX
ASHLEY OAKS
CLEMENTS SURVEYING CO., INC.

Return to:
Varner & Adams, P.C.
1719 Russell Parkway
Building 200
Warner Robins, Georgia 31088
05-05611/Governor's Estate, LLC

[BAR CODE]
Doc ID: 007351910001 Type: GLR
Filed: 12/12/2005 at 03:19:01 PM
Fee Amt: $460.00 Page 1 of 1
Transfer Tax: $450.00
Houston, Ga. Clerk Superior Court
Carolyn V. Sullivan Clerk
BK 3665 PG 98

WARRANTY DEED

STATE OF GEORGIA
COUNTY OF HOUSTON

THIS INDENTURE, made this 7th day of December, 2005, between **JOHN D. JESSUP,** of the County of Houston and State of Georgia, as party/parties of the first part, and **GOVERNOR'S ESTATE, LLC,** of the County of Houston and State of Georgia, as party/parties of the second part,

WITNESSETH:

First party, for and in consideration of the sum of TEN DOLLARS ($10.00) and other valuable considerations, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto

second party/parties, his/her/their heirs and assigns, the following described property, to-wit:

> All that tract or parcel of land situate, lying and being in Land Lot 162 of the Tenth (10th) Land District of Houston County, Georgia, being known and designated as Parcel 76-9, containing 38.51 acres, more or less, being more particularly shown on an Annexation Plat for Governor's Cove, prepared by McDougald & Associates, LLC, dated November 14, 2005, said plat being of record in Plat Book 66, Page 16, Clerk's Office, Houston Superior Court. Said plat and the record thereof are incorporated herein by reference for all purposes.
>
> This conveyance and the warranties hereinafter contained are made subject to any and all restrictions, easements, covenants and rights-of-way affecting said described property.

TO HAVE AND TO HOLD said property, together with all and singular the rights, members, hereditaments, improvements, easements, and appurtenances thereunto belonging or in any wise appertaining unto second party/parties, his/her/their heirs and assigns FOREVER IN FEE SIMPLE with full WARRANTY OF TITLE to said property against the claims of all persons whomsoever.

IN WITNESS WHEREOF, first party has signed and sealed this deed, the date and year above written.

/s/ John D. Jessup
JOHN D. JESSUP

Signed, sealed and
delivered in the presence of:

/s/ [Illegible]
Unofficial Witness

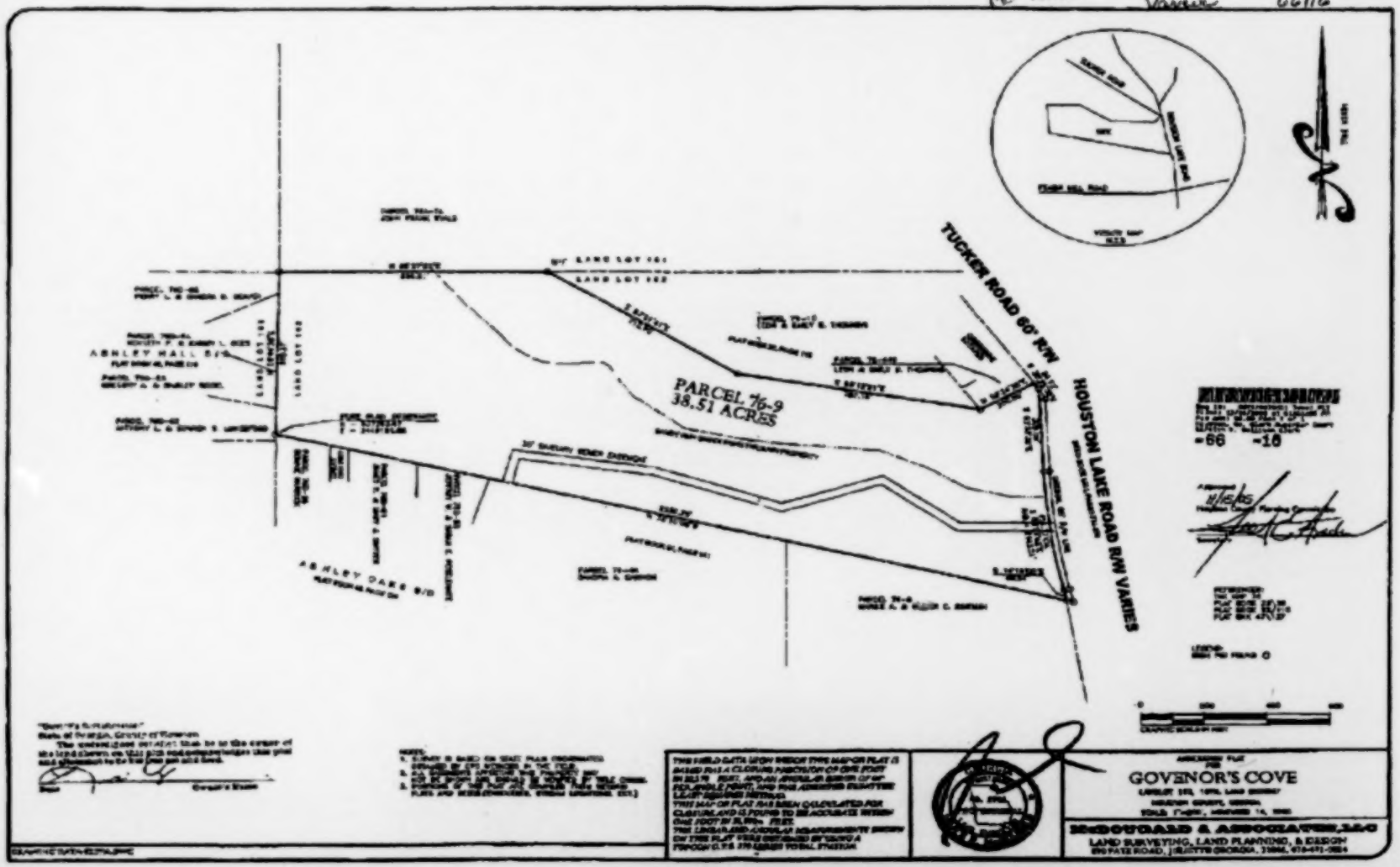
/s/ G.E. Adams
Notary Public

My commission expires:

[SEAL]

G. E. ADAMS
Notary Public
STATE OF GEORGIA
My Comm. Exp. 3/30/08

App. 8


PARCEL 76-9
38.51 ACRES
TUCKER ROAD 60' R/W
HOUSTON LAKE ROAD R/W VARIES
ASHLEY HALL S/D
ASHLEY OAKS S/D
GOVENOR'S COVE
McDONALD & ASSOCIATES, LLC

WARRANTY DEED

[BAR CODE]
Doc ID: 008814660003 Type: GLR
Filed: 11/14/2006 at 09:24:15 AM
Fee Amt: $14.00 Page 1 of 3
Transfer Tax: $0.00
Houston, Ga. Clerk Superior Court
Carolyn V. Sullivan Clerk
BK 4072 PG 169-171

STATE OF GEORGIA, COUNTY OF HOUSTON

THIS INDENTURE, Made the 22 **day of** March, **in the year one thousand nine hundred** 99, **between** Clements Title Service, Inc. **of the County of ___ and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and** Bonnie Harbuck **of the County of ___ and State of Georgia as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).**

WITNESSETH that: Grantor, for and in consideration of the sum of Twenty One Thousand and NO/100* **DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, alienated, conveyed and confirmed and by these presents does grant, bargain, sell, alien, convey or**

confirm unto the said Grantee, all the following described property, to-wit:

> All that tract or parcel of land lying and being in Land Lot 162 of the Tenth Land District of Houston County, Georgia, being known and designated as Lot 4, Block A, Ashley Oaks Subdivision, according to a plat of survey of record in Plat Book 48, Page 76, Clerk's Office, Houston Superior Court. Said plat and the record thereof are incorporated herein by reference for all purposes.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor warrants and will forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in presence of:

/s/ [Illegible] (Seal)

(Seal)

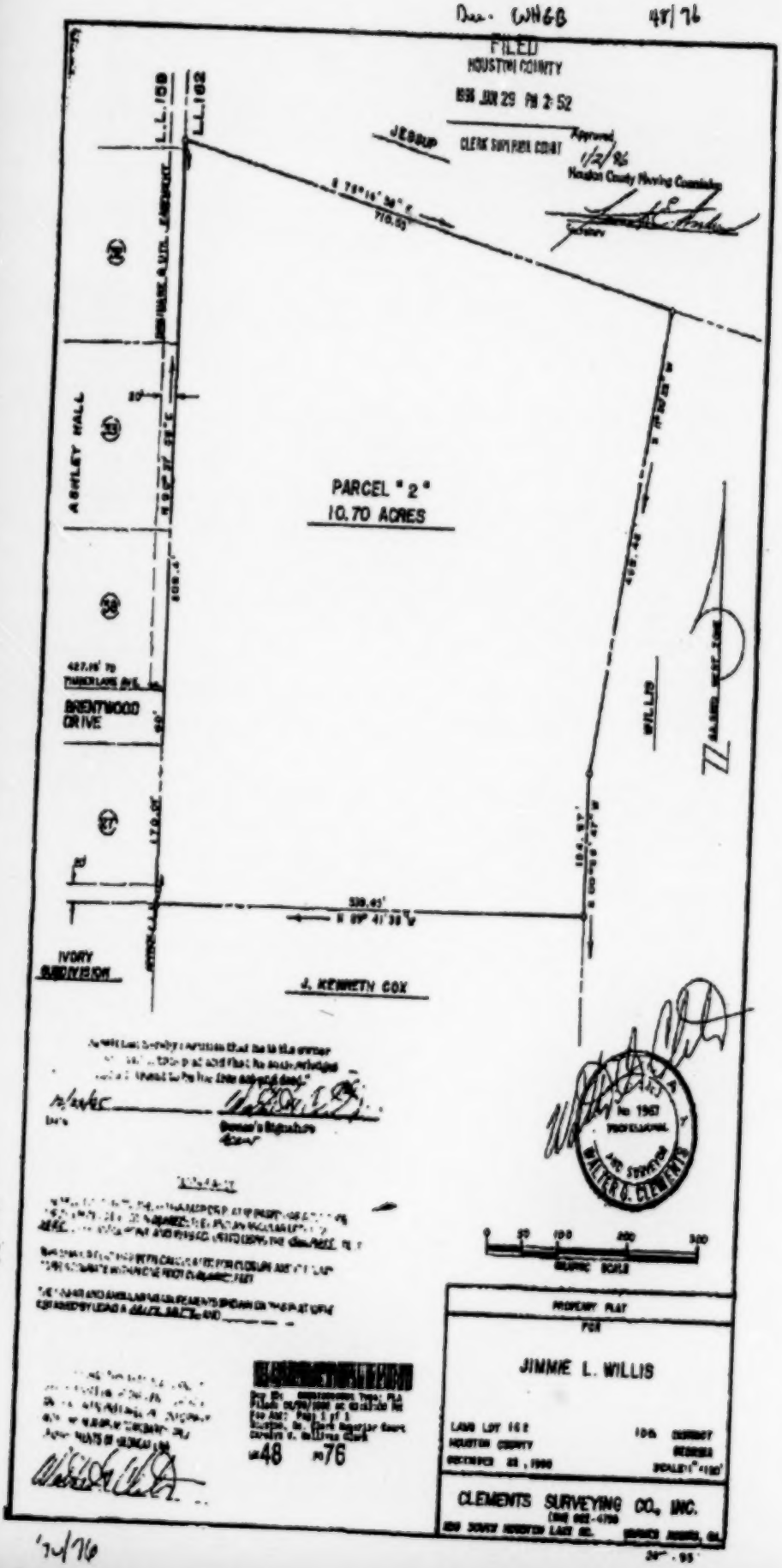
/s/ [Illegible] (Seal)

/s/ [Illegible] (Seal)

Notary Public
Houston County, Georgia

[STAMP]

Dec. WHGB 48/76



App. 12

1/26/76

Uniform Rules for the Superior Courts

Rule 25.1 Motions.

All motions to recuse or disqualify a judge presiding in a particular case or proceeding shall be timely filed: in writing and all evidence thereon shall be presented by accompanying affidavit(s) which shall fully assert the facts upon which the Motion is founded. Filing and presentation to the judge shall be not later than five (5) days after the affiant first learned of the alleged grounds for disqualification, and not later than ten (10) days prior to the hearing or trial which is the subject of recusal or disqualification, unless good cause be shown for failure to meet such time requirements. In no event shall the motion be allowed to delay the trial or proceeding.

113

No. 08-426

Supreme Court, U.S.
FILED
NOV 2 1 2008
OFFICE OF TH CLERK

In The

Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

HOUSTON COUNTY,
GOVERNOR'S ESTATE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITIONER'S REPLY BRIEF

BONNIE MICHELLE SMITH
Counsel of Record

P.O. Box 8633
Warner Robins, GA 31095-8633
(478) 397-6984

Attorney for the Petitioner

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

RESTATEMENT OF QUESTION PRESENTED

How much money must change hands in financial dealings to constitute a conflict of interest or impartiality of a Judge or Special Master to warrant recusal under the Fourteenth Amendment when the Special Master sold property to the Developer for a profit prior to Petitioner's Quiet Title Action?

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Ware v. Henry County Water and Sewage Authority, 258 Ga. App. 778 (2002) 1

CONSTITUTION, STATUTES AND RULES:

14th Amendment United States Constitution 1, 2

Commentary, Canon 2A, Federal Code of Conduct for United States Judges 2

ARTICLES:

CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999 1

BRIEF REPLY BY PETITIONER TO RESPONDENT

This case should be co-joined with *08-22 Caperton, Et. Al. V.A.T. Massey Coal Co., Et. Al.*, 2008 WL 918444. The question presented is parallel to Caperton's question. Caperton: Does failure to recuse violate the due process clause of the Fourteenth Amendment? Harbuck: How much money must change hands in financial dealings to constitute a conflict of interest to warrant recusal under the Fourteenth Amendment? These cases should be combined. *08-22 Caperton, Et. Al. V.A.T. Massey Coal Co., Et. Al.*, 2008 WL 918444, petition was granted on November 14, 2008.

Contrary to the Respondents assertions, Harbuck's question is not sarcastic or insulting. The Georgia Supreme Court stated that bias must be "of such a nature of intensity that it would impede the exercise of impartial judgment." *Harbuck v. Houston County*, 284 Ga. 4 (2008), quoting *Ware v. Henry County Water and Sewage Authority*, 258 Ga. App. 778 (2002).

States and Federal Circuits all over the country diverge on what is or is not a conflict interest. CNN reported the Community Rights Counsel Study in 1999, finding that eight federal judges had a conflict of interest. CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999. The Judges ranged from the D.C. Circuit, First Circuit, Third Circuit, Sixth Circuit, Seventh

Circuit, Eighth Circuit, and Ninth Circuit. This study was more than nine years ago.

The problem is widespread and not just limited to Georgia in Harbuck's case, or West Virginia in the Caperton case. Failure to ensure an impartial judiciary violates the Fourteenth Amendment and also worse than that, erodes the ever declining confidence in the judicial system.

Ask anyone. The general public does not trust lawyers or judges. "The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." Commentary, Canon 2A, Federal Code of Conduct for United States Judges. There should not be some heightened test where bias is of such a nature that would impede impartiality, as Georgia suggests. If the general public who is not a lawyer or a judge would think that impropriety would exist, then that should be our guide.

Being a lawyer or a judge used to be the highest calling. Yet now, our reputations are so sullied in the legal community by appearances of impropriety and money changing hands, that our professions are no longer noble or admired. How much money is too much money to trigger a conflict of interest?

It is a fair, honest question, whose time is ripe for review.

CONCLUSION

The petition for a writ of certiorari should be granted and combined with 08-22 *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 2008 WL 918444.

Respectfully submitted,

BONNIE MICHELLE SMITH
Counsel of Record

P.O. Box 8633
Warner Robins, GA 31095-8633
(478) 397-6984

115 (4)

No. 08-426

Supreme Court U.S.
FILED
DEC 26 2008
OFFICE OF THE CLERK

In The

Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

HOUSTON COUNTY,
GOVERNOR'S ESTATE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR REHEARING

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Attorney for the Petitioner

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CONSTITUTION, STATUTES AND RULES:

14th Amendment United States Constitution 2, 4

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Sup. Ct. R. 44.1 1

BOOK:

Eugene Gressman, et al., Supreme Court Practice 815-818 (9th Edition 2007) 3

ARTICLE:

CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999 2

PETITION FOR REHEARING

Bonnie Harbuck respectfully petitions for rehearing of the Court's December 1, 2008 decision. Specifically, she asks for an order (1) granting rehearing and (2) setting the case for oral argument as an appropriate, logical, and necessary companion to *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 2008 WL 918444, or (3) staying the ruling of *Harbuck*'s rehearing until after the Supreme Court has passed decision upon the *Caperton* petition. *Caperton* is set for argument on Tuesday, March 3, 2009.

GROUNDS FOR REHEARING

Although this Court almost never grants petitions for rehearing, this case meets the rare exception contemplated by Sup. Ct. R. 44.1 and in *Ambler v. Whipple*, 90 U.S. 278, 282 (1875).

Harbuck's case should be co-joined as a companion with *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 2008 WL 918444, or at least an order staying any outcome of *Harbuck*'s decision until the Court rules in *Caperton*. The question in *Caperton* is on point to the question in *Harbuck* and if a rehearing is at least stayed, then the finality of *Harbuck*'s decision can remain open until the Court adjudicates *Caperton*.

REHEARING IS WARRANTED IN LIGHT OF THE FACT THAT THIS COURT RECENTLY ACCEPTED A 14TH AMENDMENT JUDICIAL ETHICS CASE

Harbuck's case is an appropriate companion to *Caperton*. The question presented is parallel to *Caperton*'s question. Both are 14th Amendment judicial ethics and conflict of interest cases that this Court rarely accepts. Yet it is a question that is time for review. A ruling in *Caperton* will settle many such cases throughout the country on the same constitutional grounds.

States and Federal Circuits all over the country diverge on what is or is not a conflict of interest. CNN reported the Community Rights Counsel Study in 1999, finding that eight federal judges had a conflict of interest. CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999. The judges ranged from the D.C. Circuit, 1st Circuit, 3rd Circuit, 6th Circuit, 7th Circuit, 8th Circuit, and 9th Circuit. This study was more than 9 years ago.

The problem is widespread and not just limited to Georgia in *Harbuck*'s case, or West Virginia in the *Caperton* case. Failure to ensure an impartial judiciary violates the 14th Amendment and also worse than that, erodes the ever declining confidence in the judicial system.

"The test for appearance of impropriety is whether the conduct would create in reasonable

minds, with knowledge of all relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." *Commentary Canon 2A, Code of Conduct for United States Judges.* There should not be some heightened test where bias is of such a nature that would impede impartiality, as Georgia suggests. If the general public who is not a lawyer or a judge would think that impropriety would exist, then that should be our guide. The Georgia Supreme Court stated that bias must be "of such a nature of intensity that it would impede the exercise of impartial judgment." *Harbuck v. Houston County*, 284 Ga. 4 (2008), quoting *Ware v. Henry County Water and Sewage Authority*, 258 Ga. App. 778 (2002).

REHEARING IS APPROPRIATE EVEN IF OTHER GROUNDS SUFFICE TO JUSTIFY THE COURT'S DISPOSITION

While rehearing is rarely granted, this Court has granted rehearing petitions after a decision over 20 times. Eugene Gressman, et al., Supreme Court Practice 815-818 (9th Edition 2007).

Harbuck is a little person. Some would argue that her issue is not worthy of the Supreme Court's attention. After all the amount of money in *Caperton* is a $50 million dollar jury verdict and a $3 million dollar judicial campaign supporter. Yet *Harbuck*'s

case does not even rise to the level of $300,000.00 dollars.

Does the 14th Amendment then apply less to her? Of course not. This Court receives thousands of petitions a year, with rarely a judicial ethics case. The fact that such a similar 14th Amendment case would be on the table at around the same time as *Harbuck*'s proves that the 14th Amendment applies to her as well as the larger *Caperton* case.

The decision in *Caperton*, whatever the outcome, will affect *Harbuck* and many others like her. While it would be an honor for any counsel to argue before this Court a companion case, this case is especially important to counsel, because Harbuck is counsel's mother.

Harbuck's case being so particularly on constitutional point as the larger *Caperton* case, validates Harbuck and her counsel.

In light of the acceptance of the *Caperton* judicial ethics case, *Harbuck*'s case should be combined with the case or stayed until final disposition of a *Caperton* ruling.

CONCLUSION

Accordingly, this Petition should be granted. Alternatively, the Court may stay final ruling in *Harbuck*'s case pending argument and disposition in March 2009 of *Caperton*.

Respectfully submitted,

BONNIE MICHELLE SMITH
Counsel of Record for Harbuck

P.O. Box 8633
Warner Robins, GA 31095-8633
(478) 397-6984

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

Bonnie Michelle Smith